

for the following reasons:

Claims 3 and 5 are objected to because of the following informalities:

Claim 3, 'dosis' should be --dose--.

Claim 5, 'tanging' should be deleted.

Appropriate correction is required.

Applicants thank the Examiner for her suggestions regarding the claims. Accordingly, applicants have amended claim 3 to correct the noted language and amended claim 5 to remove the noted language, removing the present grounds for objection.

Accordingly, applicants respectfully request the Examiner to reconsider and withdraw the objection to pending claims 3 and 5.

### **3. Rejection of Claims 1-6 under 35 U.S.C. § 102(b)**

The Official Action states that claims 1-6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Canadian Patent 1,143,651 to Lemon.

As the basis of this rejection, the Official Action states:

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Canadian Patent 1143651 to Lemon.

Regarding Claim 1, Lemon teaches a method for protection of germinating seed coated with a pesticide, characterized in the seed-containing pellets and pesticide-containing pellets are sown as individual pellets at the same time (Lemon page 1 line 9, 10, 13; page 2 line 14-15; page 3 line 11-15).

Regarding Claim 2, Lemon teaches that the pesticide-containing pellets have substantially the same shape and size as the seed-containing pellets (Lemon page 1 line 9-10).

Regarding Claim 3, Lemon teaches pesticide-containing pellets comprise a dose of pesticide that is sufficient for one seed germ (Lemon page 1 line 13-19).

Regarding Claim 4, Lemon teaches the pesticide-containing pellets contain a filler material (Lemon page 4 line 20-22).

Regarding Claim 5, Lemon discloses that the pesticide-containing pellets and the seed-containing pellets have a substantially uniform diameter from 0.5-5 mm (Lemon page 3 line 25).

Regarding Claim 6, Lemon teaches a pesticide-containing pellet to be used in the combination with a seed-containing pellet (Lemon page 1 line 9, 10, 13; page 2 line 14-15; page 3 line 11-15).

Applicants respectfully traverse this rejection. The test for anticipation is whether each and every element as set forth is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131. The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP §2131. The elements must also be arranged as required by the claim. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Lemon teaches a mixture of brassica seed and granules containing bendiocarb (i.e. pesticide), particularly where the seed and granules are of similar size and density. In a preferred embodiment, the granules are applied while sowing the seed, wherein the granules and seed are mixed together so that they can be applied to the soil as a mixture through the same application equipment. This mixture of granules and seeds has a granule:seed proportion of 1:10 to 10:1 by weight. Further, claim 1 specifies that "no more than 4% by weight of the granules is smaller than 250 microns in major dimension". This

implies that there is not complete uniformity in size and application of the individual seeds and pesticide-containing granules.

In contrast, the presently pending claims relate to a method for protecting germinating seed coated with a pesticide, characterizing seed-containing pellets and pesticide-containing pellets sown as individual pellets at the same time. Accordingly, the seed-containing pellets used in the presently claimed invention are separate from the pesticide-containing pellets. See, in this regard, Figure 6 of the instant specification showing germinated lettuce seedlings from seed-containing pellets sown separately but simultaneously with pesticide-containing pellets. Incorporating the seed germ and pesticide in separate pellets allows the seed to germinate and grow before it comes into contact with the pesticide which will be released from another pellet (see instant specification page 2, lines 6-12).

Further, the pesticide-containing pellets have substantially the same size and shape as the seed-containing pellets (i.e. complete uniformity), with a substantially uniform diameter ranging from 0.5-5 mm, according to the presently claimed invention. This allows one to use precision sowing machinery to sow one pesticide-containing pellet per one seed-containing pellet, i.e. one per plant (see instant specification page 2, lines 20-25 and page 3, lines 8-10).

Accordingly, the presently claimed inventive methods

require the sowing of two separate entities: seed-containing pellets and pesticide-containing pellets. The coating covering the seeds used to form the seed-containing pellets is a critical aspect of the presently claimed invention as it limits the negative effect of the pesticide on the seed. In contrast, Lemon only discloses the sowing of the seeds themselves with pesticide-containing granules. Lemon does not teach or disclose sowing the seeds as part of a pellet; rather the naked seeds themselves are sown. Accordingly, Lemon does not disclose this critical aspect of the presently pending claims.

Additionally, the presently claimed invention requires that the seed-containing pellets and pesticide-containing pellets are sown as individual pellets at the same time. This allows one single pesticide-containing pellet to be sown per one single seed-containing pellet. In contrast, the unpelleted seeds and granules of Lemon are sown as part of a random mixture. Accordingly, Lemon does not disclose a highly controlled sowing method as required by the presently claimed invention.

Further, the presently claimed invention requires that the seed-containing pellets and the pesticide-containing pellets are of substantially the same size and shape. This further allows the use of precision sowing machinery to sow one pesticide-containing pellet per one seed-containing pellet according to the present inventive methods. In contrast, claim 1 of Lemon specifies that "no more than 4% by weight of the granules is smaller than 250 microns in major dimension". This implies that

there is not complete uniformity in size and application of the individual seeds and pesticide-containing granules.

Accordingly, the presently claimed accurate method for the protection of germinating seeds by simultaneously sowing individual seed-containing pellets and pesticide-containing pellets is not disclosed by the Lemon reference cited by the Examiner. The reference does not teach each and every claim limitation as required by *Verdegaal Bros. v. Union Oil Co. of California*. Accordingly, a person of ordinary skill in the art would not have been able to arrive at the presently claimed invention based on the teachings of Canadian Patent No. 1,143,651.

Accordingly, applicants respectfully request the Examiner to reconsider and withdraw the rejection of pending claims 1-6.

#### CONCLUSION

Claims 1-6 are currently pending in the present application. Applicants respectfully request the Examiner to reconsider and withdraw the outstanding rejections and allow all pending claims herein.

Respectfully submitted,

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